

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

This document relates to:

*Track Three Cases*

**MDL No. 2804**

**Case No. 17-md-2804**

**Judge Dan Aaron Polster**

**DEFENDANTS' SUBMISSION ON  
JURY INSTRUCTIONS AND VERDICT FORM**

Pursuant to Rule 51 and this Court's directions, Dkt. 3945 at 13-14, Defendants submit (1) a set of Defendants' proposed jury instructions and verdict form, attached as **Exhibit A**; (2) a set of Defendants' objections to the Court's jury instructions and verdict form as distributed to the parties on November 10, 2021, attached as **Exhibit B**; and (3) a compilation of materials not originally filed on the MDL docket, attached as **Exhibit C**.<sup>1</sup> Defendants have consistently and repeatedly preserved their objections to the Court's legal rulings, instructions, and verdict form, and incorporate all prior filings by reference.<sup>2</sup> Defendants make this submission out of an abundance of caution and for the convenience of the Court and the parties.

By submitting their proposed instructions and verdict form, Defendants preserve, and expressly do not waive, their objections to any of the Court's rulings underlying those instructions. For example, Defendants continue to maintain that a nuisance cause of action is not available to Plaintiffs under Ohio law, that Plaintiffs' claims are barred by the relevant statute of limitations, that Plaintiffs have not identified a proper "public right," that neither the federal Controlled Substances Act nor its Ohio analogues qualify as "safety statutes," that the jury and not the Court should decide issues of apportionment, and that Plaintiffs have not submitted legally sufficient evidence on which a jury could base a verdict in Plaintiffs' favor. *See* Dkt.

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<sup>1</sup> Among other materials, Exhibit C contains versions of the Court's proposed jury instructions and verdict forms sent to the parties by the Special Master and other objections, proposals, and changes circulated via email.

<sup>2</sup> *See, e.g.*, Dkt. 2715 (Track One – Joint Submission on Jury Instructions and Verdict Form); Dkt. 2840 (Track One – Submission on Preliminary Charge); Dkt. 2860 (Track One – Objections to Plaintiffs' Submission on Preliminary Charge); Dkt. 2861 (Track One – Objections to Preliminary Charge); Dkt. 3449 (Track One-B – Joint Submission on Jury Instructions and Verdict Form); Dkt. 3450 (Track One-B – Proposed Neutral Statement); Dkt. 3550 (Track Three – Response on Statutes and Regulations), Dkt. 3616 (Track Three – Objections to Plaintiffs' Response on Statutes and Regulations), Dkt. 3793 (Track 3 – Joint Submission on Jury Instructions and Verdict Form); Dkt. 3975 (Track Three – Submission on Neutral Statement and Preliminary Charge); Dkt. 4043 (Track Three – Proposed Jury Instructions on CSA Regulations and Settlements); Dkt. 4120 (Track Three – Proposed Jury Instructions on Unlawful Conduct and Substantial Factor); Dkt. 4135 (Track Three – Proposed Jury Instructions on Ongoing Nuisance and Multiple Causes); Dkt. 4138 (Track Three – Proposed Jury Instructions Regarding Attorney Questions); Dkt. 4139 (Track Three – Proposed Jury Instructions Based on Oklahoma Supreme Court Decision); *see also* Dkt. 3758 at 7 ("For appellate purposes, the Court acknowledges that each party has a continuing objection to any deviation in the Court's draft instructions from that party's earlier-proposed jury instructions.").

4098. Defendants' proposed instructions and verdict form take into account the Court's prior rulings on these and other issues without waiving their objections.

Defendants note that the procedural history of the Court's final jury instructions and verdict form in this case is extensive, dating back years, cutting across Tracks One, One-B, and Three, and involving different plaintiffs and defendants, many of whom are not parties to this trial. While the Court has entertained objections and proposed modifications from all parties throughout that process, Defendants object that the Court has never issued its promised order "explaining the jury instructions and verdict form it will use in Track Three, and setting out its rulings on the parties' positions and objections in that regard." Dkt. 3579 at 2.

Dated: November 12, 2021

Respectfully submitted,

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